

## **NEW MEXICO ENVIRONMENT DEPARTMENT VOLUNTARY REMEDIATION AGREEMENT**

### **I. Introduction**

This Voluntary Remediation Agreement (“Agreement”) is entered into voluntarily by **Red Planet, LLC**, represented by **Adam Trubow, Member**, who is duly authorized and appointed (“Participant”) and the secretary of the New Mexico Environment Department (“Department”), or his or her designee, pursuant to the Voluntary Remediation Act, Sections 74-4G-1 *et seq.* NMSA 1978, and the New Mexico Voluntary Remediation Regulations (20.6.3 NMAC). The purpose of this Agreement is to detail the obligations and functions of each party relevant to the remediation to be conducted at the **Red Planet Storage** (“Site”), located at 12 Petro Drive in Roswell, under the Voluntary Remediation Program (**VRP Site No. 53221002**). This Voluntary Remediation Agreement is issued pursuant to Section 20.6.3.300 NMAC and the Delegation Order dated May 24, 2021, through which the Cabinet Secretary has delegated signatory authority to the Chief of the Ground Water Quality Bureau.

The activities conducted by the Participant under this Agreement are subject to approval by the Department. The activities conducted by the Participant shall be consistent with this Agreement, all applicable laws and regulations, and any pertinent guidance documents. The Participant shall employ sound scientific, engineering, and construction practices in the voluntary remediation activities at this Site.

### **II. Statement of Eligibility**

The secretary or his designee has determined that the application, submitted by the Participant to the Department on February 9, 2022, is complete, and that the Participant is eligible to enter into this Agreement in accordance with Section 74-4G-5 NMSA 1978 and 20.6.3.200.A NMAC.

### **III. Parties Bound**

This Agreement shall apply to and be binding upon the Participant, its officers, managing agents, directors, principals, partners, employees, receivers, trustees, agents, parents, subsidiaries and affiliates, and upon the Department, its employees, and agents. The Participant has submitted with the application a signed Declaration of Ability and Intent as set forth in 20.6.3.200.B(2) NMAC. No change in ownership, corporate, or partnership status shall in any way alter the Participant’s status or responsibilities under this Agreement unless the Participant or Department terminates this Agreement in accordance with 20.6.3.300.H NMAC.

The Participant shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The Participant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants or other parties, which are retained by the Participant, to conduct any work under this Agreement, within 14 days after the effective date of this Agreement or within 14 days of the date of retaining their services.

### **IV. Designated Project Manager**

On or before the effective date of this Agreement, the Department shall designate a project

manager. The Primary Applicant specified on the Voluntary Remediation Program Application will function as the project manager for the Participant. Each project manager shall be responsible for overseeing the implementation of this Agreement. The Department project manager will be the Department-designated representative at the site. To the maximum extent possible, communications between the Participant and Department and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the project managers shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five days prior to the change.

**V. Definitions**

“Site” means the area described in the Voluntary Remediation Application. This description is attached and incorporated herein as Exhibit 1. All other terms used are defined in Section 74-4G-3 NMSA 1978 and 20.6.3.7 NMAC.

**VI. Addresses for All Correspondence**

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by certified mail, first class mail, hand delivery, overnight mail, or by courier service to the following addresses or to such addresses as the Participant or Department designates in writing.

Documents to be submitted to the Department should be sent to:

**Mailing Address:**

Savannah Richards  
Ground Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502  
E-mail: savannah.richards@state.nm.us  
Phone number: 505-670-2221  
Fax number: (505) 827-2965

**Physical Address:**

Savannah Richards  
Ground Water Quality Bureau  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87505

Documents to be submitted to the Participant should be sent to:

**Mailing Address:**

Adam Trubow  
Red Planet, LLC  
12711 Candelaria Drive NE  
Albuquerque, New Mexico 87112  
(505) 440-0454  
adam@talrealty.com

**Physical Address:**

Same as mailing address

## **VII. Compliance with Applicable Laws**

All work undertaken by the Participant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to all Occupational Safety and Health Administration, Department of Transportation, Resource Conservation and Recovery Act, New Mexico Water Quality Control Commission, and New Mexico Environmental Improvement Board Petroleum Storage Tank regulations. In the event of a conflict between federal, state, or local laws, ordinances, or regulations, the Participant shall comply with the most stringent of such laws, ordinances, or regulations, unless provided otherwise in writing by the Department or other appropriate regulatory personnel with jurisdiction over such laws, ordinances, and regulations. Where it is determined that a permit is required under federal, state or local laws, ordinances, or regulations, the Participant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Participant shall be responsible for obtaining all permits that are necessary for the performance of the work hereunder, and for all ongoing or proposed Site activities, and for all ongoing or proposed facility operations.

## **VIII. Performance Standards and Associated Requirements**

The Participant has submitted with their application to the Department a preliminary work plan describing the proposed voluntary remediation activities as they are currently envisioned as being submitted in a final voluntary remediation work plan, which includes a description of the known and suspected contaminants to be addressed by the proposed voluntary remediation activities. This preliminary work plan was prepared pursuant to 20.6.3.200.B NMAC. A copy of the preliminary work plan is attached and incorporated herein as Exhibit 2.

**The contaminants covered by this Agreement are described as follows:**

- *Soil – Residual Total Petroleum Hydrocarbons (TPH) including gasoline range organics (GRO), diesel range organics (DRO), and motor oil range organics (MRO); volatile organic compounds (VOCs); semi-volatile organic compounds (SVOCs); polycyclic aromatic hydrocarbons (PAHs); and RCRA Metals.*
- *Groundwater – Residual Total Petroleum Hydrocarbons (TPH) including gasoline range organics (GRO), diesel range organics (DRO), and motor oil range organics (MRO); volatile organic compounds (VOCs); semi-volatile organic compounds (SVOCs); polycyclic aromatic hydrocarbons (PAHs); RCRA Metals; and 1,2-dibromoethane (EDB).*

**Voluntary remediation activities undertaken pursuant to this Agreement shall achieve the following standards or risk-based levels:**

- *Standards for Ground Water as set forth in Section 20.6.2.3103 NMAC of the Ground and Surface Water Protection Regulations (20.6.2 NMAC)*
- *New Mexico Environment Department Risk Assessment Guidance for Site Investigations and Remediation, November 2021*

It is understood that the parties may wish to modify the list of contaminants and the media in which the contaminants are located, as covered by this Agreement, as additional information about the Site is developed. The Department may approve such changes through approval of work plans and other submittals provided by the Participant during the course of undertaking voluntary remediation activities.

#### **IX. Access**

To the extent that the Site or other areas where work is to be performed hereunder are presently owned or controlled by parties other than those bound by this Agreement, the Participant shall obtain or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include, at a minimum, certified letters from Participant to the present owners of such properties requesting access agreements to permit the Participant, Department, and their authorized representatives' access to such property. Such agreements shall provide access for the Department and authorized representatives of the Department, as specified below. In the event that such access agreements are not obtained, the Participant shall so notify the Department, which may then, at its discretion, assist the Participant in gaining access.

The Participant shall provide authorized representatives of the Department access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site pursuant to this Agreement and may include, but is not limited to: inspecting and copying of Site and facility records; reviewing the progress of the Participant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as the Department may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to the Department by the Participant hereunder. Prior to conducting remediation activities, the Participant shall provide a minimum of 72 hours' notice to the Department to allow observation of Site activities and to allow the Department's authorized representatives to collect split samples, at the Department's discretion. The Participant shall permit the Department's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Participant exercises authority.

#### **X. Deliverables and Submittal Schedule**

##### **A. Final Voluntary Remediation Work Plan**

In accordance with 20.6.3.400 NMAC, the Participant shall submit to the Department a proposed final voluntary remediation work plan, detailing investigation and remediation activities to be undertaken to achieve the performance standards described in Section VIII of this Agreement. At a minimum, the final work plan must include the elements listed in 20.6.3.400.B NMAC.

##### **Submittal Schedule:**

The proposed final work plan shall be submitted by the Participant no later than 45 days after this Agreement has been signed.

If the work plan is to be prepared in phases, the work plan for the first phase shall be submitted no later than 45 days after this Agreement has been signed. Following completion, to the Department's satisfaction, of the work which is the subject of the final work plan for the first phase, the Department may require submission of one or more proposed final work plans for subsequent phases.

Department Review:

The secretary or his designee shall review and approve, approve with conditions, or disapprove a proposed final work plan within 45 days of receipt. Written notice shall be made of any conditions or deficiencies. If the secretary or his designee disapproves a final work plan, the Participant may be granted an opportunity to submit a revised version, as determined by the secretary or his designee.

Modification of Voluntary Remediation Work Plan:

The approved final voluntary remediation work plan may be modified at the request of the Participant and/or the Department, with both parties' approval, in accordance with 20.6.3.400.D NMAC.

**B. Periodic Status Reports**

The Participant shall submit periodic status reports, which detail activities completed for the reporting period and those planned for the upcoming reporting period, to the Department for the duration of this Agreement. The status report shall identify any proposed variances to the approved work plan and describe interim progress on implementation of the work plan, including analytical results of any sampling, water level measurements, Site maps or photos, as appropriate.

Submittal Schedule:

The first status report shall be submitted by the Participant no later than 90 days after this Agreement has been signed. Subsequent status reports shall be submitted on a quarterly basis until the completion report is submitted to the Department.

**C. Voluntary Remediation Completion Report**

In accordance with 20.6.3.500.B NMAC, following the completion of Site voluntary remediation activities, the Participant shall demonstrate to the Department that Site conditions meet the applicable standards specified in Section VIII of this Agreement by submitting to the Department a voluntary remediation completion report. The content of the completion report is detailed in 20.6.3.500.B NMAC. The report shall be submitted to the Department with the legal description of the affected property, and with an Affidavit of Completion of Voluntary Remediation signed by the Participant that indicates that remediation is complete, in accordance with this Agreement and applicable regulations and guidance.

Submittal Schedule:

The voluntary remediation completion report shall be submitted to the Department within 90 days following completion of voluntary remediation activities.

Department Review:

The Department shall review and determine the sufficiency of a completion report within 45 days of receipt. If the secretary or his designee does not approve the completion report, the secretary or his designee shall either issue a finding that the Participant is not in compliance with the Agreement and terminate the Agreement, or advise the Participant in writing of data gaps in the report. The Participant shall correct any identified data gaps and resubmit the completion report within 30 days of receipt of notice of data gaps.

**XI. Certificate of Completion**

If the secretary or his designee approves the voluntary remediation completion report, the secretary or his designee will issue either a Certificate of Completion or a Conditional Certificate of Completion, as appropriate, pursuant to Section 74-4G-7 NMSA 1978 and 20.6.3.500.B NMAC. If a Conditional Certificate of Completion is issued, the Department shall conduct audits to ensure that all engineering controls, remediation systems, post-closure care, and affirmations of future non-residential land use are being maintained appropriately. These audits shall be performed at least every other year for the first 10 years following the issuance of the Conditional Certificate of Completion, and every five years thereafter. If, during the course of such an audit, the Department finds that any of the monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmations of future non-residential land use are not being properly maintained such that the performance standards described in Section VIII of this Agreement are no longer being met, the Department may revoke the Conditional Certificate of Completion and initiate an enforcement action.

No Certificate of Completion or Conditional Certificate of Completion shall be issued to a Participant who has not paid invoiced oversight costs in full to the Department.

**XII. Covenant Not to Sue**

Pursuant to Section 74-4G-8 NMSA 1978 and 20.6.3.600 NMAC, after the secretary or his designee issues the Certificate of Completion or Conditional Certificate of Completion, the secretary or his designee shall provide a covenant not to sue to a purchaser or prospective purchaser of the Site that did not contribute to the Site contamination, for any direct liability, including future liability, for claims based upon the contamination covered by the Agreement and over which the Department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another department or agency of the state, the covenant not to sue shall not release or otherwise apply to claims of any other office, department, or agency of the state. Except as may be agreed to by a third party, the covenant not to sue shall not release or otherwise affect a person's liability to third parties.

**XIII. Dispute Resolution**

This section shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. Dispute resolution shall be conducted in accordance with 20.6.3.300.I NMAC).

#### **XIV. Reservation of Rights**

The Department and Participant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein. The Department expressly reserves the right to take any action, including any enforcement action, to address any release not covered by this Agreement, including any release that occurs after issuance of the Certificate of Completion or any release of a contaminant not covered by the voluntary remediation agreement. The secretary's covenant not to sue shall not apply to any such release.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered hereby.

The Participant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than the Department found to be responsible or liable for contribution, indemnity or otherwise for any amounts which have been or will be expended by the Participant in connection with the Site.

#### **XV. Enforcement Shield**

Pursuant to the provisions of 20.6.3.300.A NMAC, the secretary will not initiate any enforcement action, including an administrative or judicial action, against a Participant for the contamination or release thereof, or for the activity that results in the contamination or release thereof, if the contamination is the subject of an Agreement pursuant to 20.6.3 NMAC. However, this Section shall not be a bar to any enforcement action if the Agreement is not finalized, if the Agreement is terminated or rescinded, or if the Participant does not successfully initiate or implement the Agreement within a reasonable time under the schedules set forth in this Agreement and approved work plans.

#### **XVI. Oversight Costs**

The Participant agrees to reimburse the Department for all of its costs associated with oversight and implementation of this Agreement in accordance with 20.6.3.300.J NMAC. These costs shall include those described in 20.6.3.300.J NMAC, as well as long-term oversight performed by the Department, as described in 20.6.3.500.B(5) NMAC, if a Conditional Certificate of Completion is issued.

Oversight will be invoiced based on actual hours of staff oversight, at a variable rate beginning at \$90.00 per hour. The hourly rate is calculated and updated on November 1 of each year, following a 30 calendar day public comment period. Travel and per diem costs will be invoiced at state-designated rates. Sampling and analysis costs will be invoiced at actual cost plus indirect overhead rate.

The Department will track all costs to the Department for review and oversight activities related to the Site and provide quarterly (or more often at the discretion of the Department) invoices per this Agreement for said costs. The Participant shall pay these invoiced costs to the Department within 30 calendar days after the date that the Participant receives notice that these costs are due and owed. If payment is not made within 30 days, the Department may terminate this Agreement and bring an action to collect the amount owed and the costs of bringing the collection action. If the Department prevails in such collection action, the Participant shall pay the Department's reasonable attorneys' fees and costs incurred in the collection action.

In the event that this Agreement is terminated for any reason, the Participant agrees to reimburse the Department for all costs incurred or obligated by the Department before the date of notice of termination of the Agreement.

#### **XVII. Notice of Bankruptcy**

As soon as Participant has knowledge of its intention to file bankruptcy, or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Participant shall notify the Department of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Participant shall give notice to the Department as soon as it acquires knowledge of such petition.

#### **XVIII. Indemnification**

The Participant shall defend, indemnify, and hold harmless the Department and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Participant, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Participant resulting in injury or damage to persons or property during the time when the Participant or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

#### **XIX. Effective Date and Subsequent Modification**

The Agreement shall become final and effective upon being signed by both the secretary or his designee and the Participant. The effective date of the Agreement shall be the later date of signature by either the secretary or his designee or the Participant. This Agreement may be amended only by mutual agreement of the Department and the Participant. Amendments shall be in writing and shall be effective upon being signed by both the secretary or his designee and the Participant.

#### **XX. Termination**

As provided for in 20.6.3.300.H NMAC, if an Agreement is not reached between an applicant and the secretary or his designee on or before the 30<sup>th</sup> calendar day after the secretary or his designee determines an applicant to be eligible pursuant 20.6.3.200 and 20.6.3.300 NMAC, the applicant or the secretary or his designee may withdraw from the negotiations. The Participant may terminate the voluntary remediation Agreement upon 60 calendar days' written notice via certified mail,



return receipt requested to the Department. The secretary or his designee may terminate this Agreement upon finding that the Participant is not in compliance with this Agreement. Notice of termination will be made to the Participant via certified mail, return receipt requested, and facts supporting the rationale for termination shall be set forth in the notification. The Department's costs incurred or obligated before the date the notice of termination is received are recoverable by the Department under the Agreement if the Agreement is terminated.

**XXI. Complete Agreement**

This Agreement contains the entire Agreement of the parties.

**XXII. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

The provisions of this Agreement shall be satisfied when the Department gives the Participant written notice in the form of a Certificate of Completion that the Participant has demonstrated to the secretary's satisfaction that the terms of this Agreement have been completed, including the selection and implementation of a remedial action, when appropriate.

Nothing in this Agreement shall restrict the State of New Mexico from seeking other appropriate relief to protect human health or the environment from contamination at or from this Site if not remediated in accordance with this Agreement.

**Signatures**

Participant(s):

By: \_\_\_\_\_  
(Signature of authorized representative)

Name: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

New Mexico Environment Department:

By: \_\_\_\_\_  
(Secretary or designee)

Name: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

Enclosures:    Exhibit 1:    Legal Description of Property  
                     Exhibit 2:    Preliminary Work Plan

NEW MEXICO ENVIRONMENT DEPARTMENT  
VOLUNTARY REMEDIATION AGREEMENT

**EXHIBIT 1**  
Legal Description of Property

Red Planet Storage  
VRP Site No. 53221002

The site is a 7.821 parcel located at 12 Petro Drive, Roswell, NM 88201, more particularly described as Franklin Determan Industrial Park Subdivision. The full legal description is included on the following survey.



NEW MEXICO ENVIRONMENT DEPARTMENT  
VOLUNTARY REMEDIATION AGREEMENT

**EXHIBIT 2**  
Preliminary Voluntary Remediation Work Plan

Red Planet Storage  
VRP Site No. 53221002

DRAFT

**JAMES P. BEARZI**  
**ENVIRONMENTAL AND REGULATORY COMPLIANCE CONSULTING SERVICES**  
**SANTA FE, NEW MEXICO**  
**505.699.2136**  
***jamespbearzi@gmail.com***

**Preliminary Work Plan**  
**Red Planet Storage**  
**12 Petro Drive (2 Determan Lane)**  
**Roswell, New Mexico**  
**Prepared for NMED Voluntary Remediation Program Application for**  
**Determination of Eligibility**

**February 7, 2022**

**1.0**      **Introduction**

At the request of and on the behalf of Red Planet, LLC, this Preliminary Work Plan (“PWP”) is submitted to satisfy the requirements of 20.6.3.200.B(4) NMAC and 20.6.3.400 NMAC, and to supplement the NMED Voluntary Remediation Program Application for Determination of Eligibility for the property located at 12 Petro Drive (2 Determan Lane), Roswell, New Mexico (“the Site”). This work plan outlines the proposed investigation strategy for determining if releases of petroleum products and their constituent chemicals (collectively, “Contaminants of Potential Concern” or “COPCs”) from a former refinery partially located at the Site, has occurred and whether or not a release, if found, presents a risk to human health or the environment.

This work plan is based on current knowledge of the Site’s history of use and present site conditions. A brief discussion of the site background and the proposed investigation activities are presented below. More detail is provided in the accompanying Phase 1 Environmental Site Assessment (“ESA”) (Bearzi, 2022).

**2.0**      **Background**

**2.1**      **Site Description and Physical Setting**

The Site is located within the City of Roswell in Chaves County at the southwest corner of Petro Drive and Determan Lane (Figure 1). The Site is surrounded by other commercial and light industrial properties and unimproved areas, and is partially developed as a self-storage facility. The Site is approximately 7.821 acres in size. Figure 1

is a vicinity map indicting the Site location. Figure 2 is an aerial view of the property. Attached is a boundary survey of the property. The Site's legal description is:

"Tract C of Franklin Determan Industrial Park Subdivision, in the City of Roswell, County of Chaves and State of New Mexico, as shown on the Official Plat Filed in the Chaves County Clerk's Office on August 16, 2012 and Recorded in Book 1 of Plat Records, Chaves County, New Mexico, at Page 65B."

The Site is approximately 3,570 feet above mean sea level ("amsl"); regional topography slopes to the south and southeast. Spring Creek bounds the southern portion of the Site, and flows from generally from west to east through this area. Spring Creek is contained in a concrete channel adjacent to the Site location.

The primary shallow aquifer in the Site area is interbedded gravels, sands, and silt/clay units. The local groundwater flow direction is generally to the east and south and occurs at a depth of approximately 55 feet below ground surface ("bgs") at the Site, based on data obtained by Atkins Engineering (2020) from monitoring wells at a nearby property that upon which the former refinery was also located.

The Site consists of two single-story self-storage buildings on a concrete pad, and unimproved and unpaved areas. The storage buildings have been in existence since 2014. Prior to that the entire Site was unimproved and unpaved since the refinery improvements were removed in the early 1960s. The Phase 1 Environmental Site Assessment ("Phase1 ESA") that accompanies this PWP details past and present environmental conditions at the Site.

## 2.2 Site History and Land Use

The Subject Property and several adjacent properties were the location of a petroleum refinery from the 1930s to the 1950s. After the refinery closed and the improvements removed, the property remained undeveloped until the self-storage buildings that exist today were built in 2014. Apart from the two storage buildings, the Subject Property is currently undeveloped.

The Subject Property is bound on the east and north by city streets, on the west by a railroad spur, and on the south by a bike/walking path and Spring Creek, a mostly perennial waterway. Light commercial development and undeveloped parcels surround the Subject Property. Detailed descriptions of Site history and past and present land use are contained in the accompanying Phase 1 ESA.

## 2.3 Summary of Previous Assessments and Remediation

A Phase 1 ESA was conducted on the so-called “College Boulevard Tract” in 2002, that included all or part of the former refinery property, including the Site subject to this work plan. In 2020 an investigation was conducted at a smaller portion of the former refinery location (excluding the Ritter Investments Property), but also included the Site property (EA, 2020). Soil borings were advanced in the likely locations of former refinery wastewater lagoons on the Site, and in the former location of an aboveground storage tank (“AST”) also on the Site. Groundwater grab samples were collected from some of these borings. EA asserted that because only one soil sample exceeded the most stringent Soil Screening Levels (“SSLs”)<sup>1</sup> for the Soil-to-Groundwater pathway and the groundwater sample collected from that borehole was non-detect for the compounds that exceeded the SSL, coupled with the age of the release (at least 70 years), corrective action at the Site was complete.

In its review of the EA report (EA, 2020), NMED opined that, among other factors, EA did not sample the locations of former pipe runs and smaller tanks, did not sample the footprint of the larger tanks, and should generally have implemented a grid-based sampling approach. NMED also criticized EA’s choice of analytical methods, suggesting that all samples should have been subject to laboratory analysis for a full suite of volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), polyaromatic hydrocarbons (“PAHs”), and metals. (NMED, 2020)

Ongoing corrective action at the Ritter Investment Property north of the Site has established the general groundwater flow direction and depth-to-water (Atkins Engineering, 2020). The presence of low concentrations of benzene in groundwater at the Ritter site has been documented.

#### 2.4 Suspected/Known Contaminants of Potential Concern

The suspected contaminants of potential concern (“COPCs”) based on the prior use of the Site as a petroleum refinery and physical evidence provided by documents in NMED’s possession include VOCs, SVOCs, PAHs, and metals.

#### 3.0 Proposed Performance Standard

Method 2 at 20.6.3.10.B.(2) NMAC will be used to achieve the prescribed

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<sup>1</sup> NMED Risk Assessment Guidance for Investigation and Remediation, 2019 (“Guidance”).



performance standard at subsection B.

#### 4.0 Summary of Proposed Sampling and Analysis

The proposed Site investigation activities are designed to collect and evaluate sufficient information to support and develop conclusions regarding the source of contamination if present, and if so the on-site nature and extent of contamination, migration, and fate and transport pathways in the environmental media at the site, and to allow the appropriate comparisons to achieve the performance standard in Section 3.0 above. These activities will consist of collection of soil and groundwater samples for laboratory analysis. Data quality objectives and a detailed Sampling and Analysis Plan will be developed that include a Quality Assurance Project Plan and Health and Safety Plan once a Final Voluntary Remediation Work Plan is approved.

##### 4.1 Soil Sampling

Soil borings will be advanced in the probable locations of the former wastewater lagoons and the former large AST at the Site. Because of the difficulty of precisely locating the location of smaller features such as pipe runs and small containers, additional borings will be completed across the remainder of the Site in a modified grid-based pattern. Borings will be drilled with a direct push drill rig. Samples will be collected continuously in poly vinyl chloride liners in the core barrel. Figure 3 is a site map showing the proposed locations of the borings. Boring lithology will be described, with two samples from each boring submitted to Hall Environmental Analytical Laboratories ("HEAL") in Albuquerque New Mexico, to conduct analysis of the soils using EPA methods 8260, 6010, 7411, and 8270.

##### 4.2 Groundwater Sampling

Groundwater grab samples will be collected from the following locations:

- The boring closest to the former large AST:
- Two borings in the former wastewater lagoons; and
- Two borings closest to the northern boundary of the Site.

The samples will be collected through the direct push boring casing in appropriate containers supplied by the laboratory and analyzed by HEAL with Methods 8260 and 8270.

#### 5.0 Summary of Proposed Remediation

A risk screening analysis for soil exposure and for groundwater will be completed based on the collected Site data using the NMED Risk Assessment Guidance. Concentrations of COPCs in groundwater will also be compared to the New Mexico Water Quality Control Commission standards at 20.6.2 NMAC. If the initial screening analysis indicates a potential risk, additional remediation steps will be proposed for NMED review and approval to reduce the contaminant concentrations to below the risk levels. This may include additional sampling, installation of permanent monitoring wells, or removal of contaminated material.

#### 6.0 How Proposed Activities Will Meet the VRP Performance Standards

The field investigation and sampling activities described herein will acquire the necessary data of sufficient quality to determine the risk posed to human health and the environment, and whether or not the performance standards in Section 3.0 are achieved. If the standards are not achieved, the information will be of sufficient quality to inform additional characterization or remedial actions that may be required to address Site risks to human health and the environment.

#### 7.0 References

Atkins Engineering Associates, 2020. Quarterly Monitoring Report Ritter Investments Office Complex Site; VRP Number: 53151003; 400 E College Blvd. Roswell, New Mexico 88201

Bearzi, J.P., 2022. *Phase 1 Environmental Site Assessment, 12 Petro Drive (2 Determan Lane), Roswell, NM.*

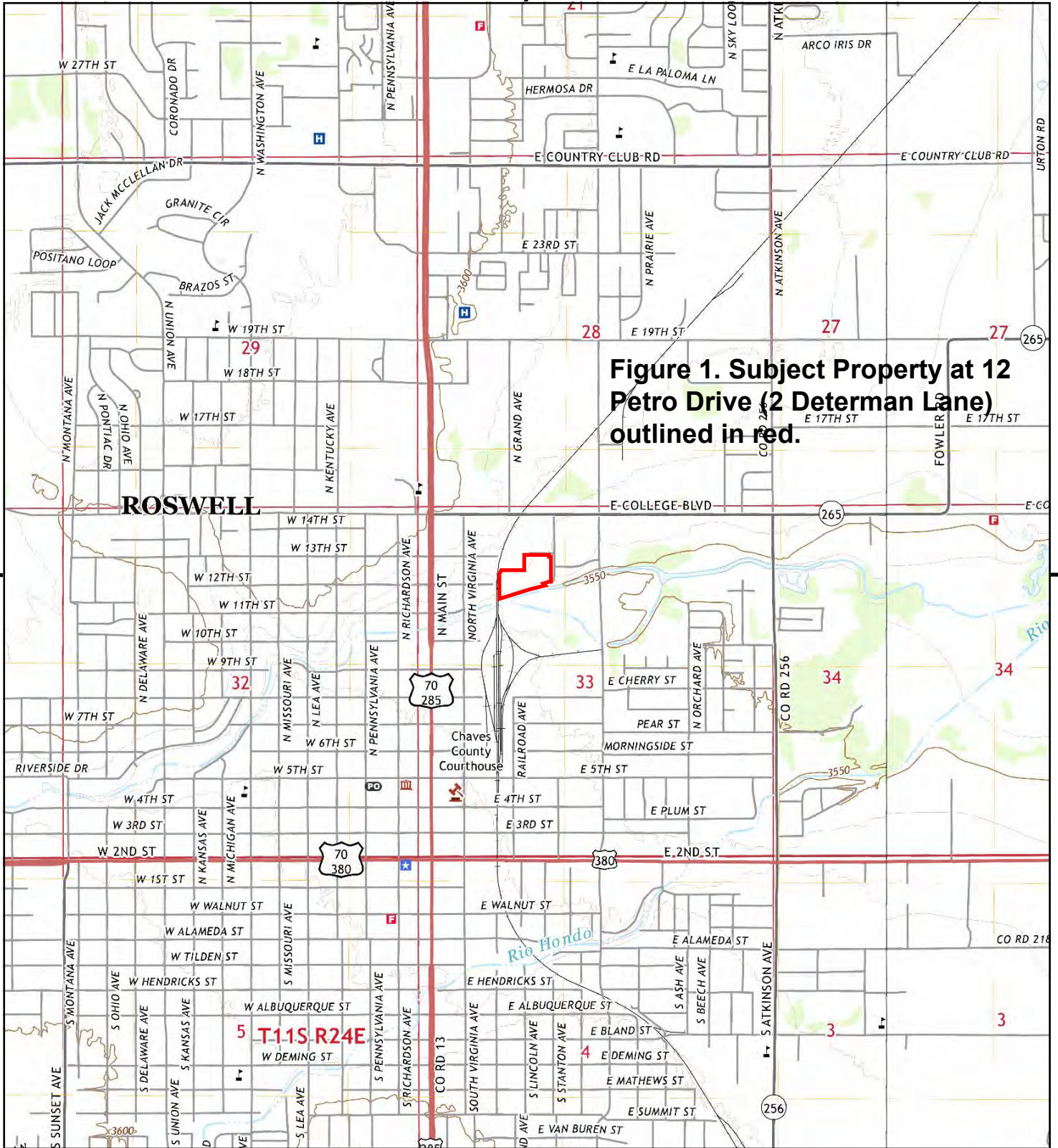
NMED, 2019. *Risk Assessment Guidance for Investigation and Remediation, Revision 2.*

NMED, 2020, *Notice of Deficiency, Corrective Action Completion Report, Former Malco Refinery, Roswell, New Mexico.*

EA Engineering, Science, & Technology, Inc., 2020. *Corrective Action Completion Report Former Malco Refinery, Roswell, New Mexico.*

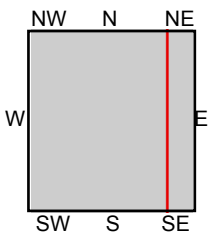
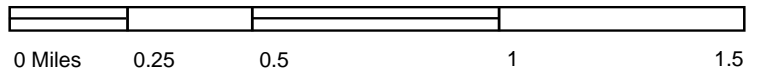
***Note – Bearzi (2022) accompanies the VRP Application with this Preliminary Work Plan. All other references are in Appendix E of Bearzi (2022).***

Attachments: Figures



**Figure 1. Subject Property at 12 Petro Drive (2 Determan Lane) outlined in red.**

This report includes information from the following map sheet(s).



TP, Roswell North, 2020, 7.5-minute  
NE, Bitter Lake, 2020, 7.5-minute

SITE NAME: Red Planet, LLC  
ADDRESS: 2 DETERMAN LN  
ROSWell, NM 88201  
CLIENT: James P. Bearzi





Figure 2. Subject Property (Tract C) at 12 Petro Drive (2 Determan Lane) outlined in red.



INQUIRY #: 6770180.8

YEAR: 2016

— = 500'





**FIGURE 3. Red Planet (Tract C) site map.**

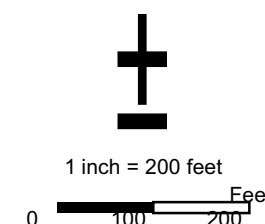
X = proposed soil boring location  
O = approximate site boundary.

Figure adapted from EA, 2020.



**Legend**

- Stream
- Railroad
- Former Small Tank (Estimated)
- Former Large Tank (Estimated)
- Former Pond (Estimated)
- Approximate Former Parcel
- Boundaries



**Approximate Former Parcel Boundaries**  
MALCO REFINERY  
ROSWELL, CHAVES COUNTY, NEW MEXICO

Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community